

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FEDERAL DEPOSIT
INSURANCE CORPORATION,
AS RECEIVER OF INTEGRITY
BANK,

Plaintiff/Appellant,

v.

JORDAN E. LUBIN, CHAPTER 7
TRUSTEE OF INTEGRITY
BANCSHARES, INC.

Defendant/Appellee.

CIVIL ACTION NO.
1:09-CV-2962-RWS

ORDER


This case is presently before the Court for consideration of the Motion for Leave to Appeal by the Federal Deposit Insurance Corporation (“FDIC-R”). After reviewing the record, the Court enters the following Order.

This Appeal concerns an order entered by the Bankruptcy Court compelling the production of documents sought by the Trustee under Bankruptcy Rule 2004 from the debtor’s former attorneys, Miller & Martin, LLP, and the debtor’s former accountants, Ernst & Young, LLP, over the privilege objections of the FDIC-R (the “Discovery Order”). The Bankruptcy

Court determined that the attorneys and accountants were jointly employed by the Debtor and Bank and held that the FDIC-R could not assert the attorney-client or work-product privileges to prevent the production of any of the documents sought by the Trustee.

The documents that the attorneys and accountants were ordered to produce to the Trustee in the Discovery Order, concern the Trustee's claim under a Fidelity Bond issued by Cincinnati Insurance Company ("CIC"). The Trustee filed suit against CIC seeking indemnification under the Bond in a separate action. (See Lubin v. Cincinnati Ins. Co., 1:09-cv-2985-RWS ("Bond Action")). In that action, the Trustee filed a Motion to Compel [39] seeking the same documents that are the subject of the Discovery Order. The Court has dismissed the Trustee's Complaint in the Bond Action and denied the Motion to Compel in that action as moot. The Trustee has no viable claim under the CIC Bond and therefore is not entitled to the documents that are the subject of the Discovery Order. The FDIC-R's Motion for Leave to Appeal is **DENIED, as moot.**

SO ORDERED, this 17th day of December, 2010.


RICHARD W. STORY
United States District Judge